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Viewing cable 06BOGOTA7986, PRELIMINARY ANALYSIS OF THE DRAFT JUSTICE AND

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Reference ID	Created	Released	Classification	Origin
06BOGOTA7986	2006-08-30 22:07	2011-08-30 01:44	CONFIDENTIAL	Embassy Bogota

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SUBJECT: PRELIMINARY ANALYSIS OF THE DRAFT JUSTICE AND
PEACE LAW REGULATIONS

Classified By: Ambassador William B. Wood.

Reasons: 1.4 (b) and (d)

SUMMARY

¶1. (C) A preliminary analysis of the the GOC draft Justice and Peace Law (JPL) regulations published on August 29 for public comment indicates that it is a mixed bag. The draft follows the Constitutional Court standard for para disclosure of their crimes, requires paras to use their licit assets to satisfy reparations, and does not preclude or hinder extradition. Still, paras would not lose their JPL benefits if their licit assets are insufficient to pay reparations, and any time spent in custody at Le Ceja will be credited as time served. Coupled with the up to 18 months credit for time spent in Ralito, this could mean some paras serve little real jail time. The decree could change since the GOC has posted it on the Presidency website for public comment until September 3. End summary.

JPL REGULATIONS OUT FOR PUBLIC COMMENT

¶2. (C) The GOC published three decrees on August 29 relating to the application of the JPL. The first decree authorizes theFiscalia to call demobilized members of the AUC in to ratify their commitment and eligibility for JPL. Minister of Interior and Justice Carlos Holguin said the decree allows the prosecutors to begin the application of the JPL and advance to the investigative and judicial phases. The other two decrees, which are posted for public comment until September 3, address the regulatory procedures for the Public Order Law (782) and the JPL. Our analysis focuses on the JPL decree.

TRUTH

¶3. (C) The demobilized paramilitary will have to provide a full confession regarding all crimes in which he participated (Art. 12, paragraph 3.). The decree states that a demobilized paramilitary loses benefits if he omits a crime from his version libre, intentionally or not. However, the paramilitary involved would first have to be convicted of such a crime. Moreover, the crime must be significant and relevant to the peace process. This is the standard set by the Constitutional Court ruling on the JPL. With regard to the post-alternative sentence "probationary period," the decree provides for the loss of benefits for any "delito doloso" that was omitted (Art. 17, paragraph 2.)

REPARATIONS WITH ILLICIT AND LICIT ASSETS

¶4. (C) The demobilized paramilitary may be required to use licit assets for reparations. Following sentencing, the decree provides that legal assets must be used to pay reparations when illegal assets are insufficient, provided that the demobilized has enough assets to lead a "dignified existence" (Art. 29, paragraph 1.) Still, the decree states that the failure to pay reparations with legal assets can never be a reason for disqualifying someone from the alternative sentencing benefits of the Law. In addition, if responsibility for the crimes for which the individual is sentenced can be assigned to a group, then first recourse on reparations will be to the group and only subsequently to the

individual (Art. 29, paragraph 3.)

DISCOUNTS ON SENTENCING

15. (C) The demobilized paramilitary will receive discount on sentencing. They will receive a discount for the time spent in Santa Fe de Ralito, a maximum of 18 months, and might also receive credit for the time spent at La Ceja. Article 17 of the decree states the decision of the Constitutional Court, which found that the time spent in Ralito could not count towards the alternative sentence (Art. 31 of Law 975,) could not be applied retroactively. In addition, the last paragraph on Article 15 suggests that if the paras voluntarily turn themselves in and are placed in the centers selected and administered by INPEC, such as La Ceja; they will also receive credit for this time served.

PRISON CONDITIONS

16. (C) The demobilized paramilitary will have to serve time in regular prisons. The decree provides that the persons serve at least half of their sentence in regular prisons. Once half of the alternative sentence is served, a person sentenced under 975 can serve the rest of his sentence as permitted by Article 28 of Law 65 of 1993, which allows the remaining time to be served in an institution other than a regular penitentiary, such as an agricultural colony.

EXTRADITION

17. (C) The decree does not address extradition. Presidential legal advisor Mauricio Gonzalez told us that the separate sedition decree would give the paras an additional argument to use against extradition, but the paras understood this would not be a winning argument. He said the paras' real purpose in seeking a sedition decree is to allow them to escape Art 179 of the Constitution which bans individuals convicted of a "delitodoloso," unless such a crime is political, from running for Congress.

ADDITIONAL CONCERNS

18. (C) The decree creates a rebuttable presumption that all crimes committed by the demobilized, including drug trafficking and illegal enrichment offenses, from the moment they joined an illegal armed group, were committed as part of their membership in the group (Art 3, paragraph 3.) The only way to rebut this presumption is for the Fiscalia to prove that the crimes were neither "collateral," "concomitant," nor "subsidiary" to the activities of the group, but were rather the sole purpose of this group. Gonzalez told us he opposes the article, but it is unclear if the GOC will remove it after the public comment period closes on September 3. He said such a presumption would unacceptably protect AUC members who killed someone while drunk or who had engaged in illicit activities solely for personal gain.

WOOD